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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 Sixth Avenue
Seattle, Washington 98101

IN THE MATTER OF:	
Environmental Protection Agency, Complainant, v. Pacific Wood Treating Corporation EPA ID. No. WAD0098036906, Respondent.	RCRA Docket 1085-09-26-3008P SECOND AFFIDAVIT OF PATRICK H. WICKS

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

The undersigned, being first duly sworn on oath, deposes and says:

1. In EPA's memorandum in opposition, on page 8, it is stated that the groundwater monitoring system at the RBT site "could not (and cannot) address any releases from the landfill which may have occurred prior to the installation of the present system, except for the monitoring of the neighbor's wells". This statement ignores the sampling and testing which was performed during closure to determine whether any contamination was present beneath and adjacent to the former waste disposal area. These samples were collected in three auger hole borings, AH-1, AH-2 and

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AH-3. A total of eleven soil samples were collected from these auger holes at depths ranging from 3 feet to 22 feet below ground surface. These soil samples were tested for naphthalene (a creosote constitute), pentachlorophenol and arsenic (by EP Toxicity method). Laboratory test results for these samples were less than the detection limits except for one sample at AH-3 at eleven feet deep, which had a result of 0.012 ppm arsenic (EP toxicity result). These results showed that essentially no migration of these constituents had occurred from the former waste disposal area. In addition, prior to closure, a sample of the ponded water adjacent to the former waste disposal area was collected and tested. Testing results on the ponded water showed that this water was essentially uncontaminated.

If migration of hazardous constituents from the former waste disposal area had occurred, these laboratory results for the pond water and soils beneath and adjacent to the former waste disposal area would have been expected to be higher than reported. Accordingly it was concluded by PWT and their consultants that there had been no significant migration of contaminants from the former waste disposal area. DOE and EPA's actions at that time would also indicate their conclusion on this aspect was the same. The agencies also at that time did not appear to desire that post-closure monitoring specifically address releases from the former waste disposal area. Such monitoring did not appear justified since there had apparently been no migration and the wastes were removed from the former waste disposal area during closure.

The above-cited statement by EPA also minimizes the significance of pre-closure testing of drinking water supply wells. As reported in the RBT Site Preliminary Ground Water Investigation Report, samples were collected from drinking water supply wells adjacent to the RBT site in May, 1983. Testing results for these samples show that no significant contamination appeared in these drinking water supply wells which could reasonably be attributed to prior release of contaminants from the former disposal area. Results of continued monitoring of these drinking water supply wells (and of the lysimeters, underdrain and toe drain) during post-closure appears to confirm this lack of contamination which might be attributed to prior release of contaminants.

2. On page 17 of the EPA memorandum, it is stated ". . . [t]he [groundwater monitoring] system has no mechanism to detect releases which may have occurred prior to installation of the current system." This statement ignores the fact that all waste was removed from the former disposal area and the testing results which indicate a lack of release of hazardous constituents to the soil beneath this former waste disposal area. Accordingly, it does not appear to be necessary or appropriate to monitor groundwater to determine whether any such prior release had occurred. Furthermore, in the 40 CFR Part 265 regulations, groundwater monitoring is not required in situations where waste and contaminated soil has been removed from a RCRA facility. 40 CFR §§265.228 and 265.258. Thus, groundwater monitoring is not required in the former waste disposal area, since it was demonstrated adequately that wastes and

contaminated subsoils had been removed from that area during closure of the RBT site.

3. EPA's August 10, 1983 letter to the Washington Department of Ecology states on page 1: "EPA is willing to accept, however, an environmentally sound closure alternative that includes measures equivalent to the interim status closure and post closure requirements . . . " On page 2 of the same letter, EPA states, "PWT needs to design a GW monitoring system that is consistent with 40 CFR 265 Subpart F but which considers that this site will be closed. This system should include four monitoring wells (one up and three down). Some of these wells in the system may be the wells already identified in PWT's preliminary GW report [i.e. the RBT Site Preliminary Ground Water Investigation Report]." The terms "equivalent", "consistent", "environmentally sound alternative" in this EPA letter can only be interpreted to mean that groundwater monitoring at the RBT site need not be specifically as provided in 40 CFR 265. In addition, the statement is made by EPA in this letter that some of the wells identified in "PWT's Preliminary GW report" (i.e. the RBT Site Preliminary Ground Water Investigation) can be used for monitoring. One has to conclude that this statement gives specific approval for use of some drinking water supply wells as monitoring wells since these are the only wells that are identified in RBT Site Preliminary Ground Water Investigation Report. EPA cannot claim it has consistently and at all times demanded strict adherence to the 40 CFR 265 regulations. Thus, EPA allowed use of at least some drinking water supply wells for monitoring at RBT and

that the lysimeters, toe drain and underdrain monitoring serve as additional backup measures. Conversely, monitoring of the drinking water supply wells could be considered as a backup to monitoring of the lysimeters, underdrain and toe drain.

4. On page 16 of the EPA memorandum, it is stated that the groundwater monitoring system at RBT " . . . utilizes lysimeters and surrounding domestic water wells." The use of the underdrain and toe drain systems at the new encapsulation areas are totally ignored in this statement as part of the RBT groundwater monitoring system. Wolf's affidavit acknowledges that the underdrain and toe drain are useful for monitoring and he does not argue against the RBT monitoring system being superior in some respects to the requirements of 40 CFR 265. EPA's memorandum at page 16 indicates that lysimeters are not suitable for groundwater monitoring because, "They are susceptible to clogging by sand or soil." While it is true that lysimeters are susceptible to clogging, this statement in EPA's memorandum does not take into account the fact that the post closure groundwater monitoring plan for the RBT site requires that lysimeters which do not function properly must be either repaired or replaced. Such repair or replacement would negate any clogging problems satisfactorily. Certainly EPA would require repair or replacement of groundwater monitoring wells which had failed to operate properly, as is required for the RBT lysimeters. Also in reference to lysimeters, the statement in EPA's memorandum at page 16 "Their construction is susceptible to producing incorrect analysis and data" apparently reflects statements in

Wolf's affidavit to the effect that iron, sulfate, pH and total organic halogen will or may not be accurately measured in samples collected from lysimeters. However, none of these parameters were required to be monitored at RBT. PWT and its consultants have recognized from the beginning of this matter that lysimeters and domestic water wells are not prescribed by the 40 CFR 265 regulations.

Patrick H. Wicks

SUBSCRIBED AND SWORN to before me this 1st day of July, 1986.

Notary Public in and for the State of Washington, residing at Seattle.

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